

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	§	
	§.	Chapter 11
CIRCUIT CITY STORES, INC., et al.,	§.	
	§.	Case No 08-35653 (KRH)
Debtors.	§.	
	§	Jointly Administered

**RESPONSE AND REQUEST FOR HEARING TO LIQUIDATING TRUST'S NINTH
OMNIBUS OBJECTION TO LANDLORD CLAIMS (REDUCTION OF CERTAIN
PARTIALLY INVALID CLAIMS, RECLASSIFICATION OF CERTAIN
MISCLASSIFIED CLAIMS, DISALLOWANCE OF CERTAIN INVALID
CLAIMS, DISALLOWANCE OF CERTAIN LATE FILED CLAIMS,
AND DISALLOWANCE OF CERTAIN AMENDED CLAIMS)**

Capmark Finance, Inc. ("Capmark") on behalf of Bank of America National Association (Bank of America), by and through its counsel Bryan Cave LLP, hereby files this Response and Request for Hearing to Liquidating Trust's Ninth Omnibus Objection To Landlord Claims (Reduction of Certain Partially Invalid Claims, Reclassification of Certain Misclassified Claims, Disallowance of Certain Invalid Claims, Disallowance of Certain Late Filed Claims, and Disallowance of Certain Amended Claims) (the "Objection"), and states as follows:

1. The Trustee for Debtors has objected to proof of claim number 9724 (the "Claim") filed by Capmark as special servicer for Bank of America, National Association, as

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successor by merger to LaSalle Bank, National Association (f/k/a LaSalle National Bank), as Trustee (the "Trustee") for the Registered Holders of GMAC Commercial Mortgage Securities, Inc., Mortgage Pass-Through Certificates, Series 1998-C2.¹

2. Capmark filed the Claim on January 30, 2009 for the amount of \$457,440.00 (the "Claim Amount") plus unpaid prepetition rent and unpaid prepetition additional rent.

3. The basis for the Claim is lease rejection damages. As stated in the Claim, Bank of America held a mortgage on the real property commonly known as 3600 S. Glenstone Ave. Springfield, MO Store No. 3217 (the "Property"). The mortgagor on the property, Catamount a/s Exchange Corporation, a Delaware corporation, as trustee of the WEC 96D Springfield Investment Trust, a Delaware business trust (the "Borrower"), leased the property to Circuit City Stores, Inc. ("Circuit City") pursuant to a written lease (the "Lease"), between Borrower, as Landlord and Circuit City, as Tenant, as it may have been amended. The Lease and the rents thereunder were assigned by the Borrower to its lender in an Assignment of Leases and Rents, effective as of November 27, 2006 ("the Assignment"). The Assignment of Leases and Rents, Exhibit A, was subsequently conveyed by the lender to the Trustee.

4. Circuit City rejected the Lease.

5. Section 4.8 of the Assignment provides, in part, that:

"In the event any lessee under any of the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of the Assignee, in each instance, and any check in payment of damages for termination or rejection of any such Lease shall be made payable to the Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that Assignor will duly endorse to the order of Assignee any such check which is made

¹ Subsequent to the filing of the Claim and effective January 20, 2011, U.S. Bank National Association succeeded Bank of America, N.A. as trustee for the Registered Holder of GMAC Commercial Mortgage Securities, Inc., Mortgage Pass-Through Certificates, Series 1998-C2.

payable to Assignor, the proceeds of which shall be applied to the indebtedness secured by this Assignment. Assignor hereby irrevocably appoints Assignee and its successors and assigns as its attorney-in-fact, which power is coupled with an interest, after an Event of Default, to so endorse any such checks if Assignor does not do so”

6. In its objection, the Trustee for Debtors stated that:

“Claimant is not the landlord. Debtors are addressing the prepetition claims for this property in Claim No. 12572 filed by the landlord.”

7. Trustee should not address the prepetition claims for this property with the landlord because the Assignment clearly provides that the landlord’s rights in the property were terminated in favor of Bank of America upon the rejection of the Lease.

8. Accordingly, it is improper for Trustee for Debtors to deal with the landlord regarding the property that is subject to proof of claim 9724.

WHEREFORE, Capmark respectfully requests that the Court (a) overrule the Objection as it relates to the Claim; (b) allow the Claim as provided in Capmark’s proof of claim; and (c) grant Capmark such other and further relief as this Court deems appropriate under the circumstances.

Dated: April 6, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby states that on the 6th day of April, 2011, a true and correct copy of the above foregoing instrument was sent to:

Clerk of the Bankruptcy Court
United States Bankruptcy Court
701 East Broad Street-Room 4000
Richmond, VA 23219

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/s/ Phillip J. Meitl

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